

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of Application 12328 by Frank Alexis to Appropriate Water from an Underground Source Tributary to Fish Lake Valley in Mono County for Stockwatering Purposes.

oOo

Decision A. 12328 D. 724

Decided November 2, 1951

oOo

IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JULY 16, 1951:

Albert F. Alexis

Applicant's Son

J. J. Heacock

Senior Hydraulic Engineer,
Division of Water Resources,
Department of Public Works,
Representing the State Engineer

Note: George Covert, lessee and option holder of the Bar 99 Ranch, was interviewed.

oOo

OPINION

General Description of the Project

The project contemplates the appropriation of 7200 gallons per day, year-round, from a source described as an underground source tributary to Fish Lake Valley. According to the application the source is to be tapped by a driven well and the water extracted by means of a 5 gallons-per-minute pump which in turn is to deliver through about 75 lineal feet of $1\frac{1}{2}$ inch pipe to a steel watering trough. The well is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, T 5 S, R 37 E, M.D.B.&M. The use contemplated is the watering of 300 head of

cattle and 15 horses. The application states that the quarter quarter section described, upon which are located both the proposed point of diversion and the proposed place of use, is unoccupied public land. It indicates that application has been made to lease this land from the federal government.

Protest

Messrs. Basil Brewer and George A. Riley protest the proposed appropriation. They assert that the applicant's proposed point of diversion is situated within a half mile of one of their own wells which they drilled and developed for stockwatering purposes, and within about a mile of another well which they also maintain for stockwatering. They state that they acquired range rights in the area from the applicant's grantors and predecessors in interest and developed percolating water as a supply for stockwatering some time ago. They contend that the granting of a permit to the applicant would lessen the value of their range rights. They charge that the applicant's purpose in seeking to appropriate is to obtain a supply which will enable him to encroach upon range which they, the protestants, now use. They state that one of their wells is situated within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T 5 S, R 37 E, and the other in the SW $\frac{1}{4}$ of Section 5 of the same township. They represent that if the application is approved the utility of their existing wells and facilities will be destroyed. They question the authority of the Department to approve the application, asserting that the water filed upon is percolating water. They decline to state terms under which their protest may be disregarded and dismissed.

Answer

In answer to the protest the applicant stated that the protestants' nearest stockwatering well is over a mile away from the point at which he proposes to appropriate. He states however that on land which he owns he maintains a well which is approximately one half mile from one of the protestants' wells. He denies that the protestants acquired the range rights in the area from his grantors and predecessors in interest. He admits that the protestants have developed a well upon land belonging to them in Section 5 of the township under discussion but denies that the approval of his application would destroy their existing range rights. He denies that his purpose in initiating an appropriation is to secure a supply which will enable him to encroach upon range which the protestants use, stating on the contrary that his purpose is to provide a watering place closer to his own range to keep his cattle from using the protestants' watering hole. He alleges that the only nearby stockwatering well that the protestants maintain is situated in the SW $\frac{1}{4}$ of Section 5, T 5 S, R 37 E, which is the well to which his cattle have occasionally drifted. He denies that his proposed appropriation will destroy the utility of the protestants' wells but asserts on the contrary that that appropriation will provide an additional watering place that will tend to keep his cattle on their proper range.

Field Investigation

The parties having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on July 16, 1951 by an engineer of the

Division. The applicant was represented at the investigation. The lessee and option holder of the Bar 99 Ranch, which, reportedly, is no longer owned by the protestants, was interviewed.

Discussion

According to the report of the investigation of July 16, 1951 the protestants formerly owned or controlled over 1700 acres in Fish Lake Valley, in the vicinity of the proposed point of diversion, and ranged cattle thereabouts, but have recently sold that portion known as the Bar 99 Ranch to parties referred to as C. C. Pierce et al., who in turn currently are leasing that property to the George Covert who was interviewed in connection with the investigation. Mr. Covert stated, according to the report, that little water had been used in the vicinity of the proposed appropriation and that they (presumably the present owners) had no objection to the filing, but that in his opinion Mr. Pierce should be consulted in the matter also.

With reference to Fish Lake Valley, Water Resources Bulletin 11, State of Nevada, entitled "Preliminary Report on Ground Water in Fish Lake Valley..." by T. E. Eakin, a publication prepared in cooperation with the Federal Department of the Interior, states in part as follows:

"The valley floor.....is about 45 miles long and extends from a water gap on the north to a point about 8 miles south of Oasis.... It ranges in width from about 1 to 5 miles.... The slope of the valley floor is northward, averaging about 11 feet per mile from Oasis to Fish Lake Spring near the central part....and about 5 feet per mile from Fish Lake Spring to the Gap ...

"The source of the ground water....is principally precipitation in the....mountains....

"The slope of the water table and hence the general direction of movement of the water conforms in a subdued form to the slope of the land surface, that is....toward the central part of

the valley and northward along the axis of the valley....

"Essentially all of the ground water discharges from the valley by transpiration....and evaporation....

"Underflow through the Gap is very minor."

As to the applicant's proposed point of diversion the report of field investigation states that that point is an old well, said to have been drilled many years ago by the U. S. Geological Survey for underground water investigation, that the well has a 10 inch casing and in 1947 was sounded at 90 feet, that at the time of the investigation of July 16, 1951 water was standing at about 65 feet below ground surface but its depth could not then be sounded because of some floating obstruction, that the well is in the lower slope of the valley's alluvial fill, being about one half mile removed and higher than the axis of the valley. The report further states that there is no well defined water channel across the valley slope, that several shallow swales are evident, that apparently runoff during recent years has been light and indications point to the probability that any cut channels have been filled with blow sand, and that there are shallow swales about 100 feet distant on each side of the well but that these are probably not the most recent channels, judging from the brush covering.

As to the applicant's holdings the report of field investigation states that the applicant owns the NE $\frac{1}{4}$ of Section 8 and the SE $\frac{1}{4}$ of Section 5 and has a grazing lease on the balance of Section 8, all of T 5 S, R 37 E, M.D.B.&M. It states that in 1948 the applicant drilled a well at a location roughly $\frac{1}{2}$ mile north of the point of diversion now filed upon and equipped the new well with a windmill and a trough for stock watering. The report states further that the applicant owns some 1760 acres and leases some 22,000 acres, that the home ranch is at Oasis, that the main water supply

of the home ranch and of the valley is Cottonwood Creek but that there are several wells in the valley, mostly ranging from 90 to 100 feet in depth, with water usually standing in them at elevations of about 60 feet below ground surface.

According to the USGS topography of the region (Lida, White Mountain and Silver Peak quadrangles) Cottonwood Creek is the southernmost of several streams which enter Fish Lake Valley from the mountains located directly to the west. The channel of Cottonwood Creek is shown on the map as extending to the vicinity of Oasis, which appears to be in or near the trough or axis of the valley. The channels of the other streams are shown as stopping somewhat short of that trough. From the termini, as shown on the map, of the channels of these several streams any water reaching that far may be supposed, except in time of flood, to sink and to flow underground, in a direction governed largely by the slope of the land surface. Some lateral percolation could well occur but the slopes suggest strongly that underground flows from the several channel termini proceed quite directly to the valley trough and then follow the course of that trough, northerly. Such flow may be considered as partaking of the nature of "subterranean streams flowing through known and definite channels". On the other hand underground water found at points neither on or near a defined channel or an extension thereof in the direction of maximum surface slope warrants classification only as natural ground water, of which an owner of overlying land is entitled to use a reasonable share, but which is not subject to appropriation under the provisions of the Water Code.

Inasmuch as the well from which applicant Alexis seeks to appropriate is one half mile distant and higher than the valley trough, lies on or near no stream channel of enough importance to be shown on the

USGS maps or to be identifiable by the engineer who conducted the field investigation or on any continuation of such channel and because no information furnished by the applicant or disclosed by the field investigation supports a conclusion that the source filed upon is a subterranean stream flowing through a known and definite channel it is the opinion of this office that the water filed upon is not subject to appropriation under the Water Code and that the application should therefore be denied.

oOo

ORDER

Application 12328 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12328 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this day of



A. D. Edmonston
State Engineer

